

REMARKS/ARGUMENTS

Claims 1-9 are pending in the application. Claim 3 has been canceled without prejudice or disclaimer. Claim 1 has been amended to correct for an error in antecedent basis and amended in other ways. New claims 29 and 30 have been added. No new matter has been added. Reconsideration of the claims is respectfully requested.

Rejection under 35 U.S.C. § 112

In paragraph 1 on page 2 of the Office Action, claims 1-9 are rejected under 35 U.S.C. § 112 second paragraph for being indefinite. The Examiner correctly notes that "the disk" has no antecedent basis. Accordingly, claim 1 has been amended to correct for the error in antecedent basis, replacing the erroneous term "disk" with the correct term "body member". There is support in the specification for "body member" in this context: FIG. 1 shows a plurality of container tubes (120) secured to a body member (110), and FIG. 2 shows a container tube (220) unsecured from a body member (210). No new matter is added. It is believed that all claims comply with 35 U.S.C. § 112.

Rejections under 35 U.S.C. § 102

In paragraph 2 on page 2 of the Office Action, claims 1, 2, 4-6 and 8-9 are rejected under 35 U.S.C. §102 (b) as being anticipated by U.S. Patent No. 5,501,322 ("Drebushenko").

Drebushenko is directed to a carrier unit for empty beverage bottles, which screw into and are held by a planar carrier. The carrier has a plurality of first openings (16) that are adapted to receive and retain container tubes (12), and a plurality of second openings (20), where the second openings are parallel to the first openings. Most importantly, *openings are not disclosed for the purpose of holding items of any kind*. The only teaching is that of a hole for hanging the sheet.

To anticipate a claim, the reference must teach every element of the claim. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros.*

v. Union Oil Co. of California, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim."

Richardson v. Suzuki Motor Co., 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). Therefore, all claim elements, and their limitations, must be found in the prior art reference to maintain a rejection based on 35 U.S.C. §102. Applicants respectfully submit that Drebusenko does not teach every element of claim 1, and therefore fails to anticipate claim 1.

Dependent claims 2, 4-6 and 8-9, which are dependent from amended independent claim 1, were also rejected under 35 U.S.C. §102(b) as being unpatentable over Drebusenko. While Applicants do not acquiesce with the particular rejections to these dependent claims, it is believed that these rejections are moot in view of the remarks made in connection with amended independent claim 1. These dependent claims include all of the limitations of the base claim and any intervening claims, and recite additional features which further distinguish these claims from the cited references. Therefore, dependent claims 2, 4-6 and 8-9 are also in condition for allowance. Changes made in the dependent claims are made only to bring the dependency into conformity with the independent claim and not to narrow their scope.

In paragraph 3 on page 2 of the Office Action, claims 1, 2, 4-6 and 8-9 are rejected under 35 U.S.C. §102 (b) as being anticipated by U.S. Patent No. 4,960,219 ("Jordan"). Jordan discloses a snap cap apparatus that can fit over the top of multiple bottles simultaneously and thereby seal them. Jordan does not disclose openings and recesses. The caps of Jordan must be defined as recesses, not openings, but more importantly, Jordan does not provide for a set of openings for the purpose of holding items. Its only teaching is more caps (recesses).

In paragraph 4 on page 2 of the Office Action, claims 1-9 are rejected under 35 U.S.C. §102 (e) as being anticipated by U.S. Patent No. 6,533,151 ("Link"), our own reference. Link discloses a storage container system that supports a number of open-ended storage tubes. Link discloses a body member (62) that has a plurality of first recesses (28), and a member (6 or 74) with a single second opening that is not intended for holding removable items, but only a lanyard.

Now, turning first to claim 30, there is claimed, "a ridge member disposed along a portion of the body member and extending substantially outwardly from said body, the ridge member provided with plurality of openings wherein the openings are adapted to receive and frictionally retain a plurality of items sized at least slightly larger than the openings." As indicated above, the Drebusenko reference lacks such openings for the purpose of receiving and frictionally retaining items slightly larger than the openings. The holes shown in this reference are for a different purpose and have a different structure (not capable of frictional retention) and the items cannot be slightly larger than the openings, or they would not fit. In short, to apply this reference under 35 USC 102 or 103 would require a significant infusion of disclosure which is simply not there.

Claims 1 and 29 are similar in their frictional retention element and claim 1 further recites the orientation of the openings relative to the recesses, which is opposite of this reference.

The Jordan reference, as indicated, has no holes, only recesses and this is inapplicable with respect to claims 1, 29 and 30. Furthermore, in Jordan, the "ridge" 26 does not contain the recesses. To adapt Jordan to the structure in claim 30 would require that Jordan teach and recognize the concepts of 1) adding holes, not recesses, and 2) adding holes onto the ridge. First, holes are different from recesses, in that it is easy to remove the items by pushing them out in a direction opposite of insertion. The structure of Jordan clearly does not recognize this. The placement of holes on the ridge rather than elsewhere, as in Jordan, makes for a compact unit, yet with the hole-storage elements being easily accessible. If they were located on the plate 6 of Jordan, between the soda bottle recesses, the items stored between the bottles would be difficult to access.

Claim 29 recites that the holes and recesses are substantially perpendicular. This is clearly not the case in any of the references. Jordan has no holes, and all of its recesses are parallel. Drebusenko's are parallel and Link lacks the plurality of holes for storing items frictionally. No combination of references teaches or suggests the claimed

invention and to make the "leap" to the subject matter of this claim requires each reference to be stretched beyond its legitimate teaching.

Claim 1 further recites that the recesses and ridge are substantially in parallel axes. Clearly none of Drebusenko, Jordan and Link have these elements aligned perpendicularly, not substantially parallel.

CONCLUSIONS

In view of the amendments and reasons provided above, it is believed that all pending claims are in condition for allowance. Applicant respectfully requests favorable reconsideration and early allowance of all pending claims.

If a telephone conference would be helpful in resolving any issues concerning this communication, please contact Applicant's attorney of record, Michael B. Lasky at (952) 253-4106.

Respectfully submitted,

Altera Law Group, LLC
Customer No. 22865

Date: 9 May 2005

By: /Michael Lasky/
Michael B. Lasky
Reg. No. 29,555
MBL/mej